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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 1111 OF 2002
in
ARBITRATION PETITION NO.218 OF 2001

Rajendra S.Bagaria & ors .. Appellant

vs

Mahendrakumar N.Agarwal & anr .. Respondents
..

Mr.S.K.Jain for Appellant
Mr.J.T.Shah i,b Mr.H.G.Bhambhani for Respondent no.1
Mr.Sagar Divekar i.b.M/s Wadia Ghandy & Co for Respondent no.2

CORAM: P.B.MAJMUDAR &
R.V.MORE,JJ
DATED: November 30, 2009

P.C.

1. Heard learned counsel for the parties. We do not find any substance in the appeal. The learned Single Judge has upheld the order of the Appellate Tribunal by giving cogent reasons. Considering the fact that the appeal of the respondents before the Appellate Forum was maintainable yet the appellants herein approached this court earlier by way of a proceeding under section 34 of the Arbitration and Conciliation Act,1996 and the only objection which is taken is that since the High Court has decided the petition under section 34 of the said Act, the appeal filed before the Appellate Forum was not competent. We are not in a position to accept this contention. The learned Single Judge has given cogent

reasons that an appeal before the Appellate Authority was maintainable. Hence, this appeal is dismissed.

2. We may however clarify that simply because the appellant had moved an application before this court under section 34 of the Act, even though the respondent's appeal before the appellate authority was pending that itself cannot be said to be a ground for coming to the conclusion that the appellant preferred such a petition with an ulterior motive.

3. Considering the totality and circumstances of the case and the position of law, it cannot be said that the appeal preferred by the respondents before the appellate authority was not maintainable as petition under section 34 of the Arbitration and Conciliation Act was disposed of only on the question of law.

R.V.More, J **P.B.Majmudar, J**